IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.303 OF 2007

Mr.Madhu Sanghani and Anr. ..Petitioners

Versus

Mr.Dinesh H.Gandhi
and Anr. ..Respondents.

....

Mr.Gajendra Jadhav Advocate for the Petitioners.
Mr.S.R.Shinde, A.P.P. for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 27th February, 2007.

P.C.:

1. Heard the learned advocate for the Petitioners-orignial Accused Nos.1 and 2 and the learned A.P.P. for the State.

2. A complaint was filed by Respondent No.1 against the petitioners. In the said complaint, the learned Magistrate by order dated 29.12.2006 passed an order under Section 156(3) of Cr.P.C. This order of the learned Magistrate is impugned in the present petition.

3. The learned advocate for the petitioners

has submitted that the learned Magistrate ought not to have passed an order under section 156 (3) of Cr.P.C. The learned advocate for the petitioners has contended that on perusal of the complaint, it does not make out any offence against the petitioners. The learned advocate for the petitioners further submitted that the learned Magistrate has committed error in entertaining the second complaint of Respondent No.1. He submitted that on 2.8.2003 the Respondent No.1 filed a Complaint being Complaint No.72 of 2003 against Petitioner No.1 before the learned Judicial Magistrate F.C. Dahanu under Section 420 of IPC. Thereafter, Respondent No.1 made an application for withdrawal of the said complaint. On 26.12.2006, the learned Magistrate was pleased to allow the prayer for withdrawal of the said complaint. Immediately on the very same day, the Respondent No.1 filed second complaint i.e. O.M.A. No. 76 of 2006 under Sections 420, 417, 416, 418, 406 and 403 of IPC on the same set of facts with one improvement by adding the name of Petitioner No.2 as an accused. In the said complaint, the learned Magistrate by order dated 29.12.2006 passed order under Section 156(3) of Cr.P.C. which order is impugned in the present

petition.

5. The learned Magistrate has only referred the above complaint under Section 156(3) of Cr.P.C. and called for the police report. The said complaint is at investigation stage and in my opinion, the investigating agency ought to be given a reasonable opportunity to investigate.

6. The Division Bench of this Court in the case of **B.S.Khatri and Ors. Vs. State of Maharashtra and Anr., 2004(1) Bom.C.R.424**, has observed in Para-22 that it is not open for the Court to decide as to whether the averments in the complaint are reliable or genuine, and whether cognizance is liable to be taken or not. It is the exclusive jurisdiction of the Magistrate trying the offence and not the High Court to decide at such premature stage.

7. Besides this, in my view, the petition is premature. There is no need to interfere at this stage as all that has been done by the learned Magistrate is to pass an order under Section 156(3) of Cr.P.C.. The report that the police may file as a consequence of the order under section

156(3) Cr.P.C. may disclose no offence, and in such case, the Magistrate may drop the complaint. In this view of the matter, the quashing of the order at this stage would be unwarranted and premature. In case the report discloses possible commission of any offence, the Magistrate may decide to take cognizance of the matter and issue process. Against the order of the Magistrate issuing process, the petitioners have an efficacious remedy. At that stage, all the contentions of the petitioner are left open, including contention that no cognizance can be taken of second complaint.

8. Thus, in view of the decision of Division Bench of this Court in the case of **B.S.Khatri** (supra), I do not see any merit in the present petition. Hence, petition is rejected.

9. In case the investigating agency is of the opinion that custody of the petitioners is required, in such case, the investigating agency shall give 72 hours notice to the petitioners prior to their arrest. In case such notice is received by the petitioners, the petitioners to prefer necessary application before the concerned Sessions Court. Needless to say that if such an application is preferred the concerned Sessions

Court shall dispose of the said application on merits.

[SMT.V.K.TAHILRAMANI,J.]